

**CITY OF NORTH MIAMI**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(Pioneer Boulevard Streetscape Improvement - IFB #47-11-12)**  
**REVISED**

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into this 10<sup>th</sup> day of October, 2012, by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125<sup>th</sup> Street, North Miami, FL ("City") and **IMECO, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal business address at 20030 East Oakmont Drive, Hialeah, FL 33155 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

**RECITALS**

**WHEREAS**, on August 2, 2012, the City of North Miami ("City") advertised *Invitation for Bid No. 47-11-12 Pioneer Blvd. (NE 137<sup>th</sup> Street) Streetscape Improvement* ("IFB"), to provide the City with all the labor, supervision, materials, equipment, tools, services and expertise necessary to install an entry fountain and enhance an existing frog pond and plaza, to create a desirable entry feature and improve the area along NE 6<sup>th</sup> Avenue and NE 137<sup>th</sup> Street, a.k.a. Pioneer Boulevard ("Services"); and

**WHEREAS**, the Contractor was evaluated by City administration as a responsive, responsible bidder whose bid, qualifications and references demonstrated to be the most advantageous to the City; and

**WHEREAS**, the Contractor has expressed its capability, expertise and willingness to perform the Services pursuant to the terms, conditions, requirements and specifications of the IFB; and

**WHEREAS**, on October 9<sup>th</sup>, 2012, the Mayor and City Council passed and adopted Resolution No. \_\_\_\_\_, approving the selection of Contractor for the provision of Services and authorized the City Manager and City Attorney to negotiate and execute an agreement for the provision of Services.

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

**ARTICLE 1 - RECITALS**

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

**ARTICLE 2 - CONTRACT DOCUMENTS**

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 City of North Miami *Invitation for Bid No. 47-11-12 Pioneer Blvd. (NE 137<sup>th</sup> Street) Streetscape Improvement*, attached hereto by reference;

2.1.2 Contractor's response to the IFB ("Bid Submittal"), attached hereto as Exhibit A;

2.1.3 City Bid Tabulation form, attached hereto as Exhibit B; and

2.1.4 Any additional documents which are required to be submitted by Contractor pursuant to this Agreement.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

2.2.3 The IFB.

2.3 The Parties agree that Contractor is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the IFB prior to Contractor submitting its Bid Submittal or the right to clarify same shall be waived.

### **ARTICLE 3 - TIME FOR PERFORMANCE**

3.1 Subject to authorized adjustments, the Time for Performance shall be one hundred eighty consecutive days (180) days within ten (10) days from the date the Notice to Proceed is issued by the City. The Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will reasonably ensure full completion within the agreed time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law.

3.2 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to timely perform Services or any portion thereof, the City may request that the Contractor, within a reasonable period of time, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

### **ARTICLE 4 - COMPENSATION**

4.1 Contractor shall be paid an amount not to exceed Two Hundred Seventy Thousand Nine Hundred Eighty and 60/100 Dollars (\$270,980.60), as full compensation for the provision of Services to the City, in accordance with the Bid Submittal. Payment will be made in accordance with the terms of the IFB.

4.2 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

#### **ARTICLE 5 - SCOPE OF SERVICES**

5.1 The Contractor shall provide all required labor, supervision, materials, equipment, tools and services necessary for the completion of Services at the designated worksite, under the special terms and conditions provided in the IFB. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession. The City reserves the right to issue directives as necessary to facilitate the flow of work or to minimize any conflict with public operations.

5.2 Contractor shall provide and pay for competent, suitably qualified personnel to perform the Services as required by the Contract Documents. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.4 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

5.5 The Contractor shall ensure that the public roadways and any improvements or appurtenants in the vicinity of worksite remain open to the public whenever and wherever possible, and that sufficient signage is provided to direct the public or other invitees during performance of the Services. The Contractor shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.

5.6 Any material or waste generated by Contractor or its employees, agents and subcontractors shall be removed and disposed of by the Contractor at its expense, to the satisfaction of the City.

5.7 The Contractor shall restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the Contractor during the performance of Services, and shall leave the worksite unobstructed and in a neat and presentable condition. The

additional named insured, with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described in the IFB and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any Subcontractor to begin work until after similar minimum insurance to cover Subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

16.2 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

#### **ARTICLE 17 - FORCE MAJEURE**

17.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

#### **ARTICLE 18 - LOCAL BUSINESS/RESIDENT PREFERENCE**

18.1 As an inducement for the City to enter into this Agreement, Contractor affirms its local preferences status, in accordance with its Bid Submittal and Section 7-151, City Code of Ordinances. The City has relied upon these representations, as a basis of selecting Contractor in the provision of Services.

#### **ARTICLE 19 - COMMUNITY BENEFITS**

19.1 As an inducement for the City to enter into this Agreement, Contractor reaffirms its commitment of providing the City with community benefits as may be defined, requested, and approved by the City Manager, in accordance with Section 2.1 and Section 2.28 of the IFB. The approved community benefits submitted by the Contractor shall be incorporated into and shall become a part of this Agreement. Such community benefits shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the City Code. The

Contractor further acknowledges that the City has relied upon these representations and commitments, as a basis of selecting Contractor for the provision of Services.

#### **ARTICLE 20 - MISCELLANEOUS PROVISIONS**

20.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

20.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

20.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

20.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

20.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

20.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

20.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

20.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

20.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

20.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

20.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

20.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

20.13 All other terms, conditions and requirements contained in the IFB, which have not been modified by this Agreement, shall remain in full force and effect.

20.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:


By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

IMECO, Inc., a for-profit Florida Corporation

**"Contractor":**

By:  \_\_\_\_\_

Print Name: John Denis

Date: 10/19/12

ATTEST:

By:  \_\_\_\_\_

Michael A. Etienne  
City Clerk

City of North Miami, a Florida municipal Corporation: **"City"**

By:  \_\_\_\_\_

Stephen E. Johnson  
City Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: \_\_\_\_\_

Regine M. Monestime  
City Attorney